STATE OF MICHIGAN

COURT OF APPEALS

DENNIS KING,

Plaintiff-Appellant,

v

ITT TECHNICAL INSTITUTE,

Defendant-Appellee.

UNPUBLISHED
September 22, 2009

No. 287074
Wayne Circuit Court
LC No. 07-700750-CZ

Before: Stephens, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

In this wrongful-termination case, plaintiff appeals by right the circuit court's order granting defendant's motion for summary disposition. We affirm.

Defendant ITT Technical Institute ("ITT") hired plaintiff, a 55-year-old male, in August 2003, to work as chair of its Computer and Electronics Engineering Technology program at its Canton, Michigan campus. Less than three years later, ITT terminated plaintiff's employment and subsequently replaced him with a 47-year-old male employee.

In January 2007, plaintiff filed this action in the Wayne Circuit Court, alleging that ITT had discriminated against him on the bases of age and gender in violation of Michigan's Civil Rights Act ("CRA"), MCL 37.2101 *et seq*. Plaintiff claimed that ITT officials Charu Varma and Nadine Palazzolo[1] had begun in late 2005 to treat him differently than they treated younger female employees. Specifically, plaintiff complained that Varma and Palazzolo had made false statements on his performance evaluations, had wrongfully accused him of violating ITT policies, had criticized him for failing to complete various continuing education requirements, had made demeaning and derogatory comments to him, and had refused to grant him various tuition reimbursements, personal leave time, and compensatory time. Plaintiff asserted that ITT and its officials had treated other older male employees in a similar manner, and had "forced two [other] males over the age of 50 from their administrative positions during Plaintiff's employment."

[1] According to the complaint, Charu Varma was the dean of academic affairs at ITT's Canton, Michigan, campus, and Nadine Palazzolo was the director of ITT's Canton, Michigan, campus.

It is undisputed that Varma or Palazzolo informed plaintiff sometime in early 2006 that he would be required to complete several credit hours in the field of electronics by June 1, 2006. According to ITT, this requirement had not been imposed by ITT, itself, but had instead been recently imposed by the Accrediting Council for Independent Colleges and Schools ("ACICS"). ITT terminated plaintiff's employment sometime after June 1, 2006, on the ground that he had not completed the requisite coursework in the field of electronics. Plaintiff does not dispute that he did not complete the required credit hours in electronics. Indeed, he acknowledged in his complaint that although he "could have achieved [the credit hours] easily through continuing education," he "lacked the credit hours in electronics" at the time of his termination. Instead, plaintiff argues that ITT should have worked with him in an attempt to obtain ACICS approval for certain non-electronics courses that he had already taken, and should have taken into account his previous work experience in calculating whether he met the credit-hour requirement. Plaintiff also suggests that ITT should have offered him other accommodations and that it would have been impossible for him to attain the required credit hours in electronics between the date he was first informed of the requirement in early 2006, and the date of his termination in mid-2006. Plaintiff alleged in his complaint that ITT had given other, younger employees "lengthy extension[s] of the 'deadline'" to complete additional required coursework in their respective fields.

The circuit court granted summary disposition in favor of ITT on the ground that plaintiff had failed to establish a prima facie case of age or gender discrimination. Specifically, the court observed that plaintiff had presented no direct evidence of discrimination, and that even if he had, the evidence established that he was unqualified for the position from which he had been terminated.

We review de novo a circuit court's decision to grant a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

We conclude, as did the circuit court, that plaintiff failed to establish a prima facie case of age and gender discrimination. "Generally, and under Michigan law by presumption, employment relationships are terminable at the will of either party." *Lytle v Malady (On Rehearing)*, 458 Mich 153, 163-164; 579 NW2d 906 (1998). However, an employee may not be terminated in violation of an antidiscrimination statute such as the CRA. See *id*. at 172. Of particular relevance here, MCL 37.2202(1)(a) provides in relevant part:

> (1) An employer shall not do any of the following:
>
> (a) Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status.

To establish a prima facie case of wrongful termination on the basis of age or gender under the CRA, a plaintiff must prove among other things that he or she "was qualified for the position" from which he or she was terminated. *Lytle*, 458 Mich at 172-173, 177. Our Supreme Court has explained that "[a]n employee is qualified if he was performing his job at a level that met the employer's legitimate expectations." *Town v Michigan Bell Tel Co*, 455 Mich 688, 699; 568 NW2d 64 (1997). In the present case, the undisputed evidence established that plaintiff had

failed to complete the necessary educational requirements in the field of electronics, as mandated by ITT's accrediting agency ACICS. Both Varma and Palazzolo testified that this failure to complete the requisite credit hours in electronics was the reason for plaintiff's termination, and plaintiff, himself, acknowledged that he had not completed the educational requirements in electronics.

The undisputed evidence in this case showed that the educational requirements of ITT's accrediting agency had changed during the period of plaintiff's employment and that plaintiff was no longer in compliance with the accrediting agency's requirements as of mid-2006. It is clear from the lower court record that ITT fully expected plaintiff to comply with the ACICS accrediting requirements for faculty members, and that plaintiff had been aware of this expectation since he was initially hired. We acknowledge that plaintiff was informed of the new ACICS educational requirements in February 2006, and that he was told he would need to complete the required coursework by June 1, 2006.[2] Although it likely would have been difficult for plaintiff to complete the additional required coursework during this four-month period, plaintiff has presented absolutely no evidence that it would have been impossible to do so, and it is simply "no business of a court in a discrimination case to decide whether an employer demands 'too much' of his workers." See *Robin v Espo Engineering Corp*, 200 F3d 1081, 1090 (CA 7, 2000); see also *Martinez v Limited Brands, Inc*, 200 Fed Appx 571 (CA 6, 2006). Moreover, the fact that plaintiff was required to complete the coursework in a shorter-than-normal time period does not establish that ITT's adherence to the ACICS educational requirements was pretextual. "[T]he mere fact that a different, perhaps better, method of evaluation could have been used is not evidence of pretext." See *Kautz v Met-Pro Corp*, 412 F3d 463, 471 (CA 3, 2005). No reasonable trier of fact could have concluded that plaintiff was "performing his job at a level that met [his] employer's legitimate expectations" at the time he was terminated. *Town*, 455 Mich at 699.

Nor are we persuaded by plaintiff's arguments that ITT should have worked with him to obtain ACICS approval for his non-electronics coursework, or that ITT should have taken into account his work experience in calculating whether he met the credit-hour requirement. Plaintiff has offered no evidence from which a rational trier of fact could conclude that ACICS would have accepted any of these non-electronics courses in satisfaction of the credit-hour requirement. Moreover, we note that the policy concerning the substitution of work experience for coursework applied only to fields in which a bachelor's degree was unavailable at the time of the faculty member's matriculation.

In sum, we conclude that plaintiff failed to establish a prima facie case of age or gender discrimination. *Lytle*, 458 Mich at 172-173, 177. Summary disposition was therefore properly granted in favor of ITT. *Cunningham v Dearborn Bd of Ed*, 246 Mich App 621, 635; 633 NW2d 481 (2001); *Smith v Goodwill Industries of West Michigan, Inc*, 243 Mich App 438, 450; 622 NW2d 337 (2000).

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[2] Specifically, counsel stated at oral argument before this Court that plaintiff would have been expected to complete seven additional credit hours in the field of electronics.

Affirmed. As the prevailing party, ITT may tax costs pursuant to MCR 7.219.

/s/ Cynthia Diane Stephens
/s/ Kathleen Jansen
/s/ Kurtis T. Wilder